

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-090515
	:	TRIAL NO. B-9803709
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
LEON C. NORMAN JR.,	:	
Defendant-Appellant.	:	
	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

On October 2, 1998, defendant-appellant Leon C. Norman Jr. was found guilty by a jury on four aggravated-robbery counts, with each count including firearm specifications, and five counts of robbery, which also included firearm specifications on each count. The trial court sentenced Norman to 40 years' incarceration on the underlying offenses and to an additional 12 years' incarceration for the firearm specifications. The sentences for the underlying offenses and the specifications were to run consecutively, for a total of 52 years' incarceration.

On December 3, 1999, we sua sponte vacated Norman's sentences because the trial court had not provided its reasons for imposing maximum, consecutive sentences.² On remand, the trial court resentenced Norman to 36 years'

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

² *State v. Norman* (1999), 137 Ohio App.3d 184, 196, 738 N.E.2d 403 ("*Norman I*").

incarceration on the underlying offenses and to 12 years' incarceration on the firearm specifications, for a total of 48 years' incarceration. The sentencing entry stated that certain sentences were to be served concurrently, and that the sentences imposed for the firearm specifications were to be served consecutively, but no other reference was made to consecutive sentences. This court affirmed the 48-year term of incarceration.³

On February 15, 2008, the trial court ordered Norman's return from incarceration so that he could be resentenced with the appropriate postrelease-control notification. It again imposed a term of 48 years' incarceration. We again reversed the trial court's resentencing, this time holding that, under the particular circumstances of Norman's case, the aggravated-robbery and robbery counts involved allied offenses of similar import "because the commission of aggravated robbery necessarily results in the commission of robbery. * * * We point out that resentencing will not necessarily result in a reduction of Norman's aggregate term of imprisonment."⁴ On July 7, 2009, the trial court once again sentenced Norman to 48 years' incarceration. Norman has timely appealed to this court, asserting one assignment of error.

In his single assignment of error, Norman asserts that the trial court erred in sentencing him to an additional 27 years of incarceration. Norman argues that this was improperly the result of vindictiveness prohibited by *North Carolina v. Pearce*.⁵

Norman's argument is the same argument he made in *Norman III*. We overruled his argument in that appeal, specifically noting that "[t]he trial court originally sentenced Norman to 52 years' incarceration. That sentence was vacated.

³ *State v. Norman* (Aug. 30, 2000), 1st Dist. No. C-000052, unreported ("*Norman II*").

⁴ *State v. Norman* (Dec. 24, 2008), 1st Dist. No. C-080192, unreported ("*Norman III*").

⁵ (1969), 395 U.S. 711, 89 S.Ct. 2072.

The court resentenced Norman and he appealed. We upheld the ‘forty-eight-year sentence imposed by the trial court for a series of aggravated robberies.’ The trial court returned Norman for resentencing and postrelease-control notification, and again imposed a 48-year aggregate sentence.”⁶ We then held that *Pearce* was inapplicable because the trial court had not increased Norman’s sentence.⁷

Our previous remand in *Norman III* was for the limited purpose of merging Norman’s robbery convictions into his aggravated-robbery convictions. The record reveals that the trial court did precisely that. Therefore, we overrule Norman’s lone assignment of error and affirm the sentence of the trial court.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., HILDEBRANDT and MALLORY, JJ.

To the Clerk:

Enter upon the Journal of the Court on May 19, 2010
per order of the Court _____.
Presiding Judge

⁶ *Norman III*, supra, quoting *Norman II*, supra.

⁷ *Norman III*, supra.